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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003964

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SUBJECT: DE-BAATH REFORM LEGISLATION MOVING FORWARD

Classified By: Political Counselor Margaret Scobey for reasons 1.4 (B) and (D).

¶1. (C/REL UK) SUMMARY. The Higher National De-Baathification Commission (HNDBC) has been working on draft reform legislation since August, and Chairman Ahmed Chalabi recently passed the updated version to the Ambassador for review. The draft law contains few substantive changes from the previous version, and does little to improve transparency or due process procedures. However, in an October 19 meeting, HNDBC officials showed willingness to incorporate suggestions, making notes and promising changes on key areas of concern. They have asked to convene a meeting of all HNDBC Directors General, representatives of the legislative drafting committee and Emboffs to perform a comprehensive review of the legislation before its introduction to the Council of Representatives (CoR). END SUMMARY.

¶2. (C/REL UK) Poloff met with Higher National De-Baathification Commission (HNDBC) Legal Affairs Director General Abd al-Karim Al-Saidi, members of the legislative drafting committee and the nominee for Director General of the proposed Control and Inspection Directorate on October 19 to discuss the status of draft reform legislation. Al-Saidi said that the draft was nearly finished, but they still wanted to discuss the legislation with a representative from the PM,s office, to ensure that it supports and complements the PM,s national reconciliation plan. He said that the commission would be taking a break for the Eid Al Fitr holiday, but afterwards would finalize the text with the goal of introducing it to the CoR in mid-November.

Proposed Changes

¶3. (C/REL UK) At Poloff,s request, Al-Saidi discussed what he saw as the major changes to existing policy that would result from passage of the new legislation. He began by noting that CPA Order Number 1 removed all members of the Baath Party from employment. Poloff disagreed, showing Al-Saidi a copy of the order. He seemed briefly confused, then said that although the order was originally intended to apply to group members and above only, in practice it had been applied to Baathists at all party levels (NOTE: He did not know under what authority orders against low level Baathists were issued. END NOTE). Therefore, he reasoned, the draft law is a significant improvement in that it expressly allows all employees below group member &to continue on the job,8 thus returning to the spirit of CPA Order Number 1.

¶4. (C/REL UK) Al-Saidi continued, explaining that the draft legislation extended benefits to two higher party ranks. Currently, group level members must choose to either retire with pension, or to apply for an exemption to continue working. The draft law would automatically grant pensions to

group members who are dismissed from employment, but would also allow them to apply for reinstatement. The law would also improve conditions for individuals at the next level - the section member level) by giving them the right to apply for pensions.

Criteria for Benefiting from the Law

¶5. (C/REL UK) The draft law gives several categories of individuals the right to apply for reinstatement, and/or pensions. Al-Saidi listed several criteria that would be considered:

- Individuals must not have participated in crimes against the Iraqi people.
- Individuals must not have participated in the looting of the country,s wealth, nor used public funds for private gain.
- Individuals must not have participated in the regime,s policies of repression, nor been a member of any of the apparatuses of repression (intelligence agency, special security forces, Saddam,s Fedayeen, etc.).

HNDBC as &Investigative,8 Not Punitive Organization

¶6. (C/REL UK) Throughout the conversation, Al-Saidi reiterated that the HNDBC would investigate individuals, but where they found violations of the above criteria, they would apply the relevant sanction (removal from employment, etc.) and turn the cases over to the public prosecutor for criminal prosecution through the court system. Al-Saidi noted that in cases involving such allegations, HNDBC would continue to

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investigate even if the individual in question was proven not to be a Baath Party member.

HNDBC Eager for Embassy Commentary

¶7. (C/REL UK) Poloff expressed concerns about several articles in the law, including contentious issues such as the expansion of the commission,s authority to include civil society institutions, the independence of the proposed inspection directorate and procedural transparency. Al-Saidi listened carefully, and discussed the issues with his colleagues at length. Over the course of the discussion, the group literally re-wrote sections of the law. They enthusiastically invited emboffs to meet with the directors general and members of the legislative drafting committee to exchange views and discuss the deeper issues in depth.

Comment

¶8. (C/REL UK) Emboffs have had serious concerns about the direction of HNDBC &reform8 since reviewing the first version. Although Chalabi, Al-Saidi and other HNDBC officials have said that new procedures would reduce the number of individuals subject to de-Baathification, Al-Saidi admitted that the previous governing document (CPA Order Number 1) contained the same language and was not implemented. In addition, there has been no Sunni involvement in the drafting of reform legislation.

¶9. (C/REL UK) Al-Saidi asked for advice on alternative language or legal methods to ensure proper implementation of the law, stressing the importance of promoting national reconciliation. He showed a surprising willingness to consider and incorporate procedural transparency mechanisms and clarifications into the draft, and seemed genuinely happy to discuss alternative views. He promised to make some

changes to the law based on the limited topics discussed in the meeting; after Eid we will request a new copy of the draft and see if the changes have been incorporated. If Al-Saidi delivers on his word, it may be an opportunity to introduce better due process protections, greater transparency, and a timeline for termination into the de-Baathification process. It is also an opportunity to stress the importance of Sunni involvement in reform efforts, and to urge the HNDBC to reach out to Sunni leaders as they move forward with the draft.

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